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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

Plaintiff,

v.

CORNELL-DUBILIER
ELECTRONICS, INC., DANA
CORPORATION, and D.S.C. of
NEWARK ENTERPRISES, INC.,

Defendants.

CIVIL ACTION NO. _____

RD/RA CONSENT DECREE

268686



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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA for response actions at the Cornell-Dubilier Electronics, Inc. Superfund Site in South Plainfield, New Jersey, together with accrued interest; and (2) performance of studies and response work by the defendants at Operable Unit One ("OU1") of the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey (the "State") on October 20, 2003, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for OU1 of the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish & Wildlife Service and the National Oceanic and Atmospheric Administration on October 23, 2003, of negotiations with potentially responsible parties regarding the performance of the remedial design and remedial action for OU1 of the Site.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 28, 1998. 63 Fed. Reg. 40182-01.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on March 31, 1999, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. EPA completed a Remedial Investigation ("RI") Report in August, 2001, and EPA completed a Feasibility Study ("FS") Report in August, 2001.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published a notice of the completion of the proposed plan for the OU1 remedial action on June 16 and 19, 2003, in major local newspapers of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for the OU1 remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

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J. The decision by EPA on the remedial action to be implemented at OU1 of the Site is embodied in a Record of Decision ("ROD"), executed on September 30, 2003, on which the State had a reasonable opportunity to review and comment, and on which the State has given its qualified concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

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3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 101.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 83 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42

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U.S.C. § 9607(a) during the period from July 29, 2003 to the date of entry of this Consent Decree.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between July 29, 2003 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“Interest,” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“NJDEP” shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operable Unit One” or “OU1” shall mean the contaminated soil and interior dust at residential, commercial and municipal properties in the vicinity of the former Cornell Dubilier Electronics, Inc. manufacturing facility located at 333 Hamilton Boulevard, South Plainfield, New Jersey.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States and the Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through July 29, 2003, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth on pages 15-16 of the ROD and Section II of the SOW.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to OU1 of the Site signed on September 30, 2003, by the Regional Administrator, EPA Region 2, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

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“Remedial Action” shall mean those activities to be undertaken by the Settling Defendants to implement the OUI ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

“Remedial Design” shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by EPA, and any amendments thereto.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean Cornell-Dubilier Electronics, Inc., Dana Corporation and D.S.C. of Newark Enterprises, Inc.

“Site” shall mean the Cornell-Dubilier Electronics Superfund Site, encompassing a former manufacturing facility of approximately 26 acres located at 333 Hamilton Boulevard, South Plainfield, Middlesex County, New Jersey and the areal extent of the contamination from the facility, including contaminated residential, commercial and municipal properties located in the vicinity of the facility and contaminated groundwater and sediments in the Bound Brook. The Site is depicted generally on the map attached as Appendix C.

“State” shall mean the State of New Jersey.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design and Remedial Action as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to

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reimburse response costs of Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. Performance of the Work By Settling Defendants

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging of

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this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

10. Remedial Design.

a. Within 30 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 9, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. As part of the RD Work Plan, the Settling Defendants shall submit to EPA and the State a Health, Safety and Contingency Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but

not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan ("RD QAPP") in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) a Construction Quality Assurance Project Plan ("CQAPP"); (3) a Pre-design Work Plan; (4) a preliminary design submittal; (5) an intermediate design submittal; and (6) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a draft schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Settling Defendants, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) CQAPP; and (3) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards). The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

11. Remedial Action.

a. Within 51 days after the approval of the final design submittal, Settling Defendants shall submit to EPA and the State a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State an updated Health, Safety and Contingency Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

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b. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methods for satisfying any permitting requirements; (5) methodology for implementation of the Contingency Plan; (6) tentative formulation of the Remedial Action team; (7) construction quality control plan (by constructor); and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the CQAPP and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

12. The Settling Defendants shall continue to implement the Remedial Action until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 13 and Paragraph 49 only, the "scope of the remedy selected in the ROD" is: 1) excavation of an estimated 2,100 cubic yards of contaminated soil from approximately 16 properties, consisting of four previously-identified properties and an additional number to be determined based on sampling and evaluation to be performed as part of the Remedial Design, backfilling with clean fill, and property restoration as necessary; 2) soil and interior dust sampling to determine if additional properties require remediation; 3) re-evaluation of the residential properties where removal actions have been performed; 4) transportation of the contaminated soil off the Site for disposal, with treatment as necessary; 5) indoor dust remediation where PCB-contaminated dust is encountered; 6) where necessary, temporary relocation of residents during the indoor remediation; and 7) performance of an expanded Cultural Resources evaluation, including activities to complete a Stage IA

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Cultural Resources Investigation for OU1 and such further work as is determined to be necessary based on the results and recommendations of the Stage IA investigation.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 66 (Record Review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

15. a. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

(a) Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Settling Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

16. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

17. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the OU1 of the Site in accordance with the requirements of CERCLA and the NCP.

18. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Defendants' Obligation To Perform Further Response Actions. If EPA determines that the Remedial Action is no longer protective of human health and the environment pursuant to Paragraph 17, the Settling Defendants shall undertake such further response actions as EPA determines are necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment, and (2) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 66 (record review).

20. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this

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Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

23. Settling Defendants shall submit to EPA three copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

24. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall, commencing on the date of lodging of this Consent

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Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

1. Monitoring the Work;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
6. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
7. Implementing the Work pursuant to the conditions set forth in Paragraph 83 of this Consent Decree;
8. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);
9. Assessing Settling Defendants' compliance with this Consent Decree; and
10. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, as well as its representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25 of this Consent Decree.

27. For purposes of Paragraph 26 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access agreements required by Paragraph 26 this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 26 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payments for

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Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

28. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA four copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next eight weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next eight weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 49.b of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

31. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the

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Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Response and Prevention Branch (RPB) of the Emergency and Remedial Response Division (ERRD), Region 2, United States Environmental Protection Agency, at (732) 548-8730. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendants shall submit seven copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit three copies of all such plans, reports and data to the State. Upon request by EPA Settling Defendants shall submit in electronic form all portions of any report or other deliverable that Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

35. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission has a

material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable,

but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$760,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equalling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or
- e. A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

46. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45.d of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45.d or 45.e, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling

Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

47. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 45 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

48. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Work.

a. Within 90 days after Settling Defendants conclude that all phases of the Work have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after a reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13.b.

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EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants, and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

50. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA RPB, ERRD, Region 2, at (732) 548-8730. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

52. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA \$5,041,345.40 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number ____, EPA Site/Spill ID Number 02GZ, and DOJ Case Number 90-11-2-08223. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United

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States Attorney's Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 52.a shall be deposited in the Cornell-Dubilier Electronics Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

53. Payments for Future Response Costs.

a. Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendants a bill requiring payment that includes a SCORPIOS Report and a DOJ-prepared cost summary. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. Settling Defendants shall make all payments required by this Paragraph by EFT to Mellon Bank, Pittsburgh, Pennsylvania, as follows: Settling Defendants shall provide the following information to their bank:

- (i) Amount of payment;
- (ii) Title of Mellon Bank Account to receive the payment: EPA;
- (iii) Account Code for Mellon Bank Account receiving the payment: 9108544;
- (iv) Mellon Bank ABA Routing Number: 043000261;
- (v) Name of Settling Defendants;
- (vi) Docket Number CERCLA ____; and
- (viii) Site/Spill Identifier: 02-GZ.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 53.a shall be deposited in the Cornell-Dubilier Electronics Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

54. Settling Defendants may contest payment of any Future Response Costs under Paragraph 53 if they determine that the United States has made a mathematical error or if they

allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 53.

Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 53. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 53; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

55. In the event that the payments required by Subparagraph 52.a are not made within 30 days of the Effective Date or the payments required by Paragraph 53 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 70. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 53.

XVII. INDEMNIFICATION AND INSURANCE

56. Settling Defendants' Indemnification of the United States

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors,

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or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph 56, and shall consult with Settling Defendants prior to settling such claim.

57. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

58. No later than 15 days before commencing any on-Site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Work pursuant to Subparagraph 49.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of \$1.5 million dollars, combined single limit, and automobile liability insurance with limits of \$1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect

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to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

59. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of ERRD, EPA Region 2, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within 7 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

61. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 59 and 60, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

64. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

65. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 7 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 66 or Paragraph 67.

b. Within 20 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable.

However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 or 67.

66. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the ERRD, EPA Region 2, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 66.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of ERRD is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.a.

67. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position and EPA's Statement of Position submitted pursuant to Paragraph 65, the Director of ERRD, EPA Region 2, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the

schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 77. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

69. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 70 and 71 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

70. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 70.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1 st through 5 th day
\$4,000	6 th through 15 th day
\$6,000	16 th through 30 th day
\$14,000	31 st through 45 th day
\$20,000	46 th day and beyond

b. Compliance milestones or violations subject to stipulated penalties are as follows:

1. Submission of the name of the Project Coordinator to EPA pursuant to Section XII of this Consent Decree;

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2. Payment of Past Response Costs and Future Response Costs pursuant to Section XVI of this Consent Decree;
3. Payment of Stipulated Penalties pursuant to Section XX of this Consent Decree;
4. Establishing Assurance of Ability to Complete Work pursuant to Section XIII of this Consent Decree;
5. Submission and, if necessary, revision and resubmission of the Remedial Design Work Plan;
6. Submission and, if necessary, revision and resubmission of the Remedial Action Work Plan;
7. Submission and, if necessary, revision and resubmission of the Remedial Action Report;
8. Implementation of the Remedial Design and Remedial Construction of the Work in accordance with the SOW and this Consent Decree;
9. Implementation of any modification of the Work in accordance with any work plan submitted by the Settling Defendants and approved by EPA pursuant to Section VI of this Consent Decree.

71. Stipulated Penalty Amounts- Other. Settling Defendants shall pay to the United States stipulated penalties in the amount of \$1,000 per day for each day the Settling Defendants fail to meet any deadline, time limit, or scheduling milestone established in this Consent Decree and not specifically referred to in Paragraph 70.

72. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of \$200,000.

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of ERRD, EPA Region 2, under Paragraph 66.b or 67.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the

dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

74. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

75. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid in accordance with the procedures set forth in Paragraph 53. All payments shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID 02-GZ, the DOJ Case Number 90-11-2-08223, and the name and address of the party making payment. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA, and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

76. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

77. Penalties shall continue to accrue as provided in Paragraph 73 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

78. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall

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pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 74.

79. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of any Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

80. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

81. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 82 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 52.a of Section XVI (Payments for Past Response Costs). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

82. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- g. liability, prior to Certification of Completion of the Work, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans);
- h. liability for additional operable units at the Site or the final response action; and
- i. liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.

83. Work Takeover In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

84. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

85. Covenant Not to Sue. Subject to the reservations in Paragraph 86, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions, Past and Future Response Costs as defined herein, or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 88 and Paragraph 93, these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant

to the reservations set forth in Paragraphs 79, 80, 82 (b) - (d) or 82 (g) - (i), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

86. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

87. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

88. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

89. Except as provided in Paragraph 88, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 88, each of the Parties expressly reserves any and all rights (including, but not

limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

90. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" in this settlement are Past Response Costs, Future Response Costs and Work, all as defined herein.

91. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

92. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

93. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

94. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

95. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of

confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

96. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

97. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

98. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other

privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

99. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

100. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-08223

As to EPA:

Cornell-Dubilier Site Remedial Project Mgr
New Jersey Remediation Branch
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, NY 10007

and

Cornell-Dubilier Site Attorney
Office of Regional Counsel
New Jersey Superfund Branch

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U.S. EPA, Region 2
290 Broadway, 17th Floor
New York, NY 10007

As to the Regional Financial Management Officer:

Donna Vizian
Chief, Financial Management Branch
U.S. EPA, Region 2
290 Broadway, 29th Floor
New York, NY 10007-1866

As to the State:

Mary Lou Parra
State Project Coordinator
N.J. Department of Environmental Protection
401 East State Street
Trenton, NJ 08625-0413

As to the Settling Defendants:

[Name]
Settling Defendants' Project Coordinator
[Address]

XXVII. EFFECTIVE DATE

101. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

102. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

103. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is the SOW.

"Appendix C" is the description and/or map of the Site.

XXX. COMMUNITY RELATIONS

104. Settling Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

105. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

106. Except as provided in Paragraph 13 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

107. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

108. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

109. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

110. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

111. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

112. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

113. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

114. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 2004.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
_____, relating to the _____ Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date

[Name]
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

[Name]
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Date

[Name]
Assistant United States Attorney

District of _____
U.S. Department of Justice
[Address]

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
_____, relating to the _____ Superfund Site.

Date

[Name]
Regional Administrator, Region ____
U.S. Environmental Protection Agency
[Address]

Date

[Name]
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region ____
[Address]

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
_____, relating to the _____ Superfund Site.

FOR _____ COMPANY, INC. */

Date

Signature: _____
Name (print): _____
Title: _____
Address: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

STATEMENT OF WORK
Cornell-Dubilier Electronics Site
Operable Unit 1
South Plainfield, New Jersey

I. WORK TO BE PERFORMED

The objectives of the work (hereinafter "Work," as defined in Section IV of the Consent Decree (the "Consent Decree") to which this Statement of Work (SOW) is attached) to be conducted at the Cornell-Dubilier Electronics Site (Site) are to implement the remedy selected in the Environmental Protection Agency's (EPA's) September 30, 2003 Record of Decision (ROD) for Operable Unit 1 at the Site, attached as Appendix A to the Consent Decree. The Settling Defendants shall finance and perform the Work in accordance with the Consent Decree, the ROD, and this SOW, including all terms, conditions and schedules set forth herein or developed and approved hereunder.

The major components of the Selected Remedy follow:

- an expanded Cultural Resources evaluation during remedial design, including activities to complete a Stage IA Cultural Resources Investigation for OU1 and such further work as is determined to be necessary based on the results and recommendations of the Stage IA investigation;
- excavation of an estimated 2,100 cubic yards of contaminated soil from approximately 16 properties, consisting of four previously-identified properties and an additional number to be determined based on sampling and evaluation to be performed as part of the Remedial Design, backfilling with clean fill, and property restoration as necessary;
- soil and interior dust sampling to determine if additional properties require remediation;
- re-evaluation of the residential properties where removal actions have been performed;
- transportation of the contaminated soil off the Site for disposal, with treatment as necessary;
- indoor dust remediation where PCB-contaminated dust is encountered; and
- where necessary, temporary relocation of residents during the indoor remediation.

II. PERFORMANCE STANDARDS

The Remedial Design shall be designed to achieve compliance with the Performance Standards, which shall include and be consistent with the requirements set forth in pages 15-16 of the ROD. The Remedial Design shall also be designed to achieve compliance with all legally applicable and relevant and appropriate requirements (ARARs), including but not limited to substantive requirements promulgated under the Resource Conservation and Recovery Act (RCRA), the New Jersey Technical Requirements for Site Remediation, N.J.A.C. 7-26E et. seq., and applicable local requirements. For state and local requirements, only those substantive requirements that are more stringent than federal requirements and that do not conflict with CERCLA are ARARs.

III. PROJECT SUPERVISION/MANAGEMENT, PROJECT COORDINATOR

1. SUPERVISING CONTRACTOR

The RD, RA, and any other technical work performed by Settling Defendants pursuant to this Consent Decree shall meet any and all requirements of applicable federal, state and local laws and be performed under the direction and supervision of a qualified licensed professional engineering firm. Within ten (10) calendar days after lodging of this Consent Decree, Settling Defendants shall notify EPA, in writing, of the name, title, proposed responsibilities and qualifications of the Supervising Contractor. All plans and specifications shall be prepared under the supervision of, and signed/certified by, a licensed New Jersey professional engineer. Selection of the Supervising Contractor shall be subject to approval by EPA.

2. PROJECT COORDINATOR

Within twenty (20) calendar days after lodging of this Consent Decree, Settling Defendants shall notify EPA, in writing, of the name and title of the Project Coordinator who may be an employee of the Supervising Contractor. The Project Coordinator shall be responsible for the day to day management of all Work to be performed pursuant to this Consent Decree. The Project Coordinator shall have adequate technical and managerial experience to manage all Work described in this Statement of Work and under this Consent Decree. The Project Coordinator shall be knowledgeable at all times about all matters relating to activities regarding the RD and RA. The Project Coordinator shall be the primary contact for EPA on all matters relating to Work at the Site and should be available for EPA to contact during all working days. The Project Coordinator shall not be an attorney.

IV. REMEDIAL DESIGN ACTIVITIES

The RD activities to be performed in the implementation of the selected remedy for the Site include, but are not limited to, the following:

- A. Develop plans and specifications to conduct soil sampling at residential, commercial, and municipal properties in the vicinity of the former Cornell-Dubilier Electronics facility.
- B. Develop plans and specifications to conduct interior dust sampling at residential, commercial, and municipal properties in the vicinity of the former Cornell-Dubilier Electronics facility.
- C. Develop plans and specifications to excavate PCB-contaminated soil, transport contaminated soil off-site for disposal, backfilling with clean fill, and property restoration.
- D. Develop plans and specifications to conduct indoor dust remediation and where necessary, temporary relocation of residents during the indoor remediation.

- E. Develop plans and specifications for the performance of air monitoring during construction/remedial activities at the Site to ensure that air emissions resulting from the activities meet applicable or relevant and appropriate air emission requirements.
- F. Perform an expanded Cultural Resources evaluation, including activities to complete a Stage IA Cultural Resources Investigation for OU1, and such further work as is determined to be necessary based on the results and recommendations of the Stage IA investigation.

V. REMEDIAL DESIGN WORK PLAN

Within thirty (30) days of the date on which Settling Defendants receive written notification from EPA of the approval of the Supervising Contractor and authorization to proceed, Settling Defendants shall submit a detailed Remedial Design (RD) Work Plan for the design of the selected remedy to EPA and the State for review and approval. The Remedial Design Work Plan shall provide for the collection of all data needed for performing the necessary RD activities.

The Work Plan shall comply with CERCLA and relevant EPA guidance, including the EPA document entitled *Guidance on Oversight of Remedial Designs and Remedial Actions performed by Potentially Responsible Parties*, (OSWER directive 9355.5-01, EPA/540/g-90-001), dated April 1990 and shall be in conformance, *inter alia*, with the *Superfund Remedial Design and Remedial Action Guidance*, dated June 1986, and other relevant EPA guidance documents.

The Remedial Design Work Plan shall include plans and schedules for implementation of RD tasks, and shall include, but not be limited to, the following items listed in V.A.-C. below:

A. Quality Assurance/Quality Control Project Plan

A Quality Assurance/Quality Control Project Plan (QAPP) shall be prepared consistent with EPA *Requirements for Quality Assurance Project Plans for Environmental Data Operations*, (EPA QA/R-5, October 1998), and shall include the following elements:

1. A detailed description of the sampling, analysis, and monitoring that shall be performed during the RD phase, consistent with this SOW, the ROD, and the Consent Decree. At a minimum, the QAPP shall provide the following:
 - a. A plan for sampling surface and subsurface soils; and
 - b. A plan for sampling interior dust.
2. All sampling, analysis, data assessment, and monitoring shall be performed in accordance with the *Region II CERCLA Quality Assurance Manual*, Revision 1, EPA Region 2, dated October 1989, and any updates thereto and the guidelines set forth in the Consent Decree. All testing methods and procedures shall be fully documented and referenced to established methods or standards.

3. The QAPP shall also specifically include the following items:
 - a. An explanation of the way(s) the sampling, analysis, and monitoring will produce data for the RD phase;
 - b. A detailed description of the sampling, analysis, and testing to be performed, including sampling methods, analytical and testing methods, sampling locations and frequency of sampling;
 - c. A map depicting sampling locations; and
 - d. A schedule for performance of specific tasks.
4. In the event that additional sampling locations and analyses are utilized or required, Settling Defendants shall submit to EPA an addendum to the QAPP for approval by EPA.
5. The QAPP shall address the following elements:

Project Management

- a. Title and Approval Sheet
- b. Table of Contents and Document Control Format
- c. Distribution List
- d. Project/Task Organization and Schedule
- e. Problem Definition/Background
- f. Project/Task Description
- g. Quality Objectives and Criteria for Measurement Data
- h. Special Training Requirements/Certification
- i. Documentation and Records

Measurement/Data Acquisition

- j. Sampling Process Design
- k. Sampling Methods Requirements
- l. Sample Handling and Custody Requirements
- m. Analytical Methods Requirements
- n. Quality Control Requirements
- o. Instrument/Equipment Testing, Inspection, and Maintenance Requirements
- p. Instrument Calibration and Frequency
- q. Inspection/Acceptance Requirements for Supplies and Consumables
- r. Data Acquisition Requirements (Non-Direct Measurements)
- s. Data Management

Assessment/Oversight

- t. Assessments and Response Actions
- u. Reports to Management

Data Validation and Usability

- v. Data Review, Validation, and Verification Requirements
- w. Validation and Verification Methods
- x. Reconciliation with Data Quality Objectives

6. In order to provide quality assurance and maintain quality control with respect to all samples to be collected, Settling Defendants shall ensure the following:
 - a. Quality assurance and chain-of-custody procedures shall be performed in accordance with standard EPA protocol and guidance, including the *Region II CERCLA Quality Assurance Manual, Revision 1*, EPA Region 2, dated October 1989, and any updates thereto, and the guidelines set forth in this Consent Decree.
 - b. The laboratory to be used must be specified. If the laboratory participates in the Contract Laboratory Program (CLP), or if the laboratory takes quarterly Performance Evaluations (PE) for the analyses to be performed for this investigation, then project specific PE samples will not be required. If the proposed laboratory does not participate in the CLP, and does not analyze PE samples quarterly for the analyses required, then PE samples must be analyzed to demonstrate the capability to conduct the required analysis prior to being approved for use. Once a non-CLP laboratory has been selected, the laboratory should submit a copy of their Laboratory Quality Assurance Program Plan to EPA for review and approval.

For any analytical work performed at a non-CLP laboratory, including that done in a fixed laboratory, in a mobile laboratory, or in on-site screening analyses, Settling Defendants must submit to EPA a "Non-CLP Superfund Analytical Services Tracking System" form for each laboratory utilized during a sampling event, within thirty (30) days after acceptance of the analytical results. Upon completion, such documents shall be submitted to the EPA Project Coordinator, with a copy of the form and transmittal letter to:

Regional Sample Control Center Coordinator
EPA Region 2
Division of Environmental Science & Assessment
2890 Woodbridge Avenue, Bldg. 209, MS-215
Edison, NJ 08837

- c. The laboratory utilized for analyses of samples must perform all analyses according to accepted EPA methods as documented in the *Contract Lab Program Statement of Work for Organic Analysis*, (OLM04.2) or the latest

revision, and the *Contract Lab Program Statement of Work for Inorganic Analysis*, (ILM04.0) or the latest revision, or other EPA approved methods.

- d. Unless indicated otherwise in the approved QAPP, all data will be validated upon receipt from the laboratory.
- e. Unless indicated otherwise in the approved QAPP, submission of the validation package (checklist, report, and Form I containing the final data) to EPA, prepared in accordance with the provisions of Subparagraph g., below.
- f. Assurance that all analytical data that are validated as required by the QAPP are validated according to the procedures stated in the *EPA Region II Contract Lab Program Organics Data Review and Preliminary Review* (SOP #HW-6, Revision 11), dated June 1996, or the latest revision, and the *Evaluation of Metals Data for the Contract Laboratory Program* (SOP #HW-2, Revision 11), dated January 1992 or the latest revision, or EPA-approved equivalent procedures. Region 2 Standard Operating Procedures are available at: <http://www.epa.gov/region02/smb/sops.htm>
- g. Unless indicated otherwise in the approved QAPP, Settling Defendants shall require deliverables equivalent to CLP data packages from the laboratory for analytical data. Upon the EPA's request, Settling Defendants shall submit to the EPA the full documentation (including raw data) for this analytical data. EPA reserves the right to perform an independent data validation, data validation check, or qualification check on generated data.
- h. Settling Defendants shall insert a provision in its contract(s) with the laboratory utilized for analyses of samples, which will require granting access to EPA personnel and authorized representatives of the EPA for the purpose of ensuring the accuracy of laboratory results related to the Site.

B. Health and Safety Contingency Plan (HSCP)

A Health and Safety Contingency Plan (HSCP) for all activities performed under the Consent Decree shall be developed by Settling Defendants to address the protection of public health and safety and the response to contingencies that could impact public health, safety, and the environment. The HSCP shall satisfy the requirements of the *Occupational Safety and Health Guidance for Hazardous Waste Site Activities*, (June 1990, DHHS NIOSH Publication No. 90-117), and the Occupational Safety and Health Administration, U.S. Department of Labor (OSHA) requirements cited below:

- 1. All site activities shall be performed in such a manner as to ensure the safety and health of personnel so engaged. All Site activities shall be conducted in accordance with all pertinent general industry (29 CFR Part 1910) and construction (29 CFR Part 1926) OSHA standards, and EPA's *Standards Operating Safety Guides* (OSWER, 1988), as well as any other applicable State

and municipal codes or ordinances. All Site activities shall comply with those requirements set forth in OSHA's final rule entitled *Hazardous Waste Operations and Emergency Response*, 29 CFR §1910.120, Subpart H.

2. The HSCP shall include, at a minimum, the following elements:
 - a. Plans showing the location and layout of any temporary facilities to be constructed on or near the Site;
 - b. Description of the known hazards and evaluation of the risks associated with the Site and the potential health impacts related to the Site activities;
 - c. List of key personnel and alternates responsible for Site safety, response operations, and protection of the public;
 - d. Description of levels of protection (based on specified standards) to be utilized by all personnel;
 - e. Delineation of Work, decontamination, and safe zones, and definitions of the movement of zones;
 - f. Description of decontamination procedures for personnel and equipment, and handling and removal of disposable clothing or equipment;
 - g. Incidental emergency procedures which address emergency care for personnel injuries and exposure problems, and containment measures. These procedures shall include evacuation routes, internal and external communications procedures for response to fire, explosion, or other emergencies, the name of the nearest hospital and the route to that hospital. Local agencies with the capability to respond to emergencies shall be identified and their capabilities shall be described.
 - h. Description of the personnel medical surveillance program in effect;
 - i. Description of monitoring for personnel safety;
 - j. Description of routine and special personnel training programs; and
 - k. Description of an air monitoring program to determine concentrations of airborne contaminants to which workers on-site and persons near the Site boundary may be exposed. The results of work-zone air monitoring may be used as a trigger for implementing Site-boundary air monitoring, additional control measures, and/or cessation of work.

C. Description of Remedial Design Tasks

The Remedial Design Work Plan shall include a detailed description of all other RD tasks (see Sections IV. and V., above) to be performed, along with a schedule for performance of those tasks. Such tasks shall include, at a minimum, the preparation of the RD Reports required by Section VIII., below, and tasks necessary to ensure compliance with ARARs, as outlined herein and in the ROD. The Remedial Design Work Plan shall include an outline of the requirements of the RD Reports.

1. Access and Other Approvals

The Remedial Design Work Plan shall include descriptions of any approvals which Settling Defendants will need to comply with the Consent Decree, with the exception of those approvals needed from the EPA. This description shall detail how such approvals will be sought, and shall include a schedule for obtaining all necessary approvals. Such approvals shall include the consent of owners of property at or near the Site regarding access to conduct sampling, monitoring, remediation, restoration or other activities, in accordance with the Consent Decree, and approval from any off-site facility accepting waste materials from the Site. This description shall be amended if subsequent approvals are required.

2. RD Schedules, Draft Schedule for Remedial Action, and Monitoring

The Remedial Design Work Plan shall include a schedule covering all RD activities, including but not limited to, the submittal of the RD Reports listed in Section VIII., below. The Remedial Design Work Plan shall also include a draft schedule for remedial action (RA) and monitoring activities. The schedule shall be in the form of a task/subtask activity bar chart or critical path method sequence of events. The schedules are dependent on EPA approval of project documents.

3. The draft schedule for RA and monitoring activities may be revised during the remedial process, subject to the EPA's approval.

VI. APPROVAL OF REMEDIAL DESIGN WORK PLAN

EPA will either approve the Remedial Design Work Plan, or require modification of such plan, in accordance with the procedures set forth in Section XI of the Consent Decree. Settling Defendants shall implement the EPA-approved Remedial Design Work Plan in accordance with the schedules contained therein.

VII. REMEDIAL DESIGN

Settling Defendants shall perform the RD activities in conformance with the Remedial Design Work Plan approved by the EPA and within the time frames specified in the RD schedule contained therein. The RD shall include the preparation of a Preliminary RD Report (35%

completion), a pre-final RD Report (95% completion) and a Final RD Report (100% completion).

A. Preliminary, Pre-Final and Final RD Reports

The reports shall be submitted to the EPA and NJDEP in accordance with the schedule set forth in the approved Remedial Design Work Plan. Each RD report shall include a discussion of the design criteria and objectives, with emphasis on the capacity and ability to meet design objectives successfully. Each report shall also include the plans and specifications that have been developed at that point in time, along with a design analysis. The design analysis shall provide the rationale for the plans and specifications, including results of all sampling and testing performed, supporting calculations and documentation of how these plans and specifications will meet the requirements of the ROD and shall provide a discussion of any impacts these findings may have on the RD. The design reports shall also include the following items (to the extent that work has been performed regarding the items):

1. A technical specification for photographic documentation of the remedial construction work;
2. A discussion of the manner in which the RA will achieve the Performance Standards;
3. A plan for establishing institutional controls (*i.e.*, deed restrictions); and
4. A draft schedule for remedial action activities, and a preliminary schedule for monitoring activities.

B. Additional Preliminary RD Report Requirements

The preliminary RD report shall include discussion and evaluation of the RD activities performed under Section IV., above, and their results, preliminary design drawings showing general arrangement of all Remedial Action work planned, and, to the extent available, items C.1. and C.2 below.

C. Additional Pre-Final and Final RD Report Requirements

The pre-final and final RD reports shall include final plans and specifications, and, shall also include:

1. A discussion of the manner in which the design components detailed in Section IV., above, for the Remedial Action are considered in the design;
2. Table of Contents for the specifications, including a listing of items from the Construction Specifications Institute master format that are expected to be

included in the construction specifications. This master format is presented in the Construction Specifications Institute's *Manual of Practice*, 1985 edition, available from the Construction Specifications Institute, 601 Madison Street, Alexandria, Virginia 22314;

3. Engineering plans representing an accurate identification of existing Site conditions and an illustration of the work proposed. Typical items to be provided on such drawings include, at a minimum, the following:
 - a. Title sheet including at least the title of the project, a key map, the name of the designer, date prepared, sheet index, and EPA/NJDEP Project identification;
 - b. All property data including owners of record for all properties within 200 feet of the Site;
 - c. A Site survey including the distance and bearing of all property lines that identify and define the project Site;
 - d. All easements, rights-of-way, and reservations;
 - e. All buildings, structures, wells, facilities, and equipment (existing and proposed) if any;
 - f. A topographic survey, including existing and proposed contours and spot elevations for all areas that will be affected by the remedial activities, based on U.S. Coast and Geodetic Survey data;
 - g. All utilities, existing and proposed;
 - h. Location and identification of all significant natural features including, *inter alia*, wooded areas, water courses, wetlands, flood hazard areas, and depressions;
 - i. Flood hazard data and 100-year and 500-year flood plain delineation;
 - j. North arrow, scale, sheet numbers and the person responsible for preparing each sheet;
 - k. Decontamination areas, staging areas, borrow areas and stockpiling areas;
 - l. Miscellaneous detail sheets;
 - m. Definitions of all symbols and abbreviations; and
 - n. A specification for a sign at the site. The sign should describe the project, the

name of the contractor performing the RD/RA work or the PRP Group, state that the project is being performed under EPA oversight, and provide EPA contact for further information.

4. Survey work that is appropriately marked, recorded and interpreted for mapping, property easements and design completion;
5. Drawings of all proposed equipment, improvements, details and all other construction and installation items to be developed in accordance with the current standards and guidelines of the State of New Jersey State. Drawings shall be of standard size, approximately 24" x 36". A list of drawing sheet titles will be provided;
6. Engineering plans (as necessary) indicating, at a minimum, the following:
 - a. Site security measures;
 - b. Roadways; and
 - c. Electrical, mechanical, structural, as required.
7. Any value engineering proposals.
8. A Construction Quality Assurance Project Plan (CQAPP), which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official (QA Official), independent of the Remedial Action Contractor, to conduct a quality assurance program during the construction phase of the project. The CQAPP shall address sampling, analysis, and monitoring to be performed during the remedial construction phase of the Work. Quality assurance items to be addressed include, at a minimum, the following:
 - a. Inspection and certification of the Work;
 - b. Measurement and daily logging;
 - c. Field performance and testing;
 - d. As-built drawings and logs; and
 - e. Testing of the RA Work to establish whether the design specifications have been attained.
9. A report describing those efforts made to secure access and institutional controls and obtain other approvals and the results of those efforts (see Section VI. C.,

above). Legal descriptions of property or easements to be acquired shall be provided.

10. A plan for implementation of construction and construction oversight.
11. A method for selection of the construction contractor(s).
12. A proposed schedule for implementing all of the above.

VIII. APPROVAL OF RD REPORTS

- A. EPA will review and comment on the RD Reports. Settling Defendants shall make those changes required by the EPA's comments/modifications in accordance with the procedures set forth in Section XI of the Consent Decree.
- B. Changes required by EPA's comments on the pre-Final RD Report shall be made in the Final RD Report.
- C. EPA will either approve the Final RD Report or require modifications, in accordance with the procedures set forth in Section XI of the Consent Decree.

IX. REMEDIAL ACTION

- A. Within twenty-one (21) days after approval of the Final Design Report by EPA, Settling Defendants shall award a contract for the RA. Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any construction contractor proposed to be used in carrying out work under this Consent Decree. With respect to any proposed construction contractor, Settling Defendants shall demonstrate that the proposed construction contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs (American National Standard, January 5, 1995), by submitting a copy of the proposed project manager's QMP. The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA shall thereafter provide written notice of the name(s) of the contractor(s) it approves, if any. Settling Defendants may select any approved contractor from that list and shall notify EPA of the name of the contractor selected within twenty one (21) days of EPA's designation of approved contractors. If at any time Settling Defendants proposes to change the construction contractor, Settling Defendants shall notify EPA and shall obtain approval from EPA as provided in this paragraph, before the new construction contractor performs any work under this Consent Decree. If EPA disapproves of the selection of any contractor as the construction contractor, Settling Defendants shall submit a list of contractors that would be acceptable to them to EPA within thirty (30) days after receipt of EPA's

disapproval of the contractor previously selected.

- B. Within thirty (30) days of the award of the RA contract, Settling Defendants shall submit an RAWP for remedial construction activities. Each RAWP shall include, at a minimum, the following items:
1. If applicable, a "Request for Modification of Approved Final RD Report," including any requests for modification of the approved Final Design Report, based on construction methods identified by the contractor(s), or proposed modification of the construction schedule developed under Section VIII., above, or any other requests for modification, subject to EPA approval in its sole discretion.
 2. A Site Management Plan (SMP) for RA activities. The SMP for RA shall include, at a minimum, the following items:
 - a. Tentative identification of the RA Project Team (including, but not limited to the Construction Contractor).
 - b. A final schedule for the completion of the RA and all major tasks therein, as well as a schedule for completion of required plans, and other deliverables (see Section VII. C., above).
 - c. Methodology for implementation of the Construction Quality Assurance Project Plan (developed during the RD).
 - d. Procedures and plans for the decontamination of construction equipment and the disposal of contaminated materials.
 - e. Methods for satisfying any permitting requirements.
 - f. Discussion of the methods by which construction operations shall proceed. Discussion shall include the following:
 - (1) Timing of and manner in which activities shall be sequenced;
 - (2) Preparation of the Site including security, utilities, decontamination facilities, construction trailers, and equipment storage;
 - (3) Coordination of construction activities;
 - (4) Site maintenance during the RA;
 - (5) Coordination with local authorities regarding contingency planning and potential traffic obstruction; and

- (6) Entry and access to the Site during the construction period(s) and periods of inactivity, including provisions for decontamination, erosion control, and dust control.
 - (7) Identification of all off-site facilities to which Site material will be sent, and description, for each facility, of the proposed materials for disposal and method of management of those materials.
 - (8) Implementation of the photograph/slide plan to record the progress of the remedial construction work.
- g. Discussion of construction quality control, including:
- (1) Methods of performing the quality control inspections, including when inspections should be made and what to look for;
 - (2) Control testing procedures for each specific test. This includes information which authenticates that personnel and laboratories performing the tests are qualified and the equipment and procedures to be used comply with applicable standards;
 - (3) Procedures for scheduling and managing submittals, including those of subcontractors, off-Site fabricators, suppliers, and purchasing agents; and
 - (4) Reporting procedures including frequency of reports and report formats.
- h. Procedures to be used to determine whether performance standards are being achieved, and reporting procedures and frequency for results of such testing.
3. A Quality Assurance/Quality Control Project Plan (QAPP) for the Remedial Construction phase of the Work shall be prepared consistent with EPA *Requirements for Quality Assurance Project Plans for Environmental Data Operations*, (EPA QA/R-5, October 1998) (see Section V. A., above, for QAPP requirements).
 4. An updated HSCP for the Remedial Construction phase of the Work (see Section V. B., above, for HSCP requirements). The HSCP shall address health and safety measures to be implemented and observed by construction personnel, as well as recommended health and safety measures for the adjacent community and general public. The HSCP shall include the name of the person responsible in the event of an emergency situation, as well as the necessary procedures that must be taken in the event of an emergency, as outlined in the Consent Decree.

C. Approval of Remedial Action Work Plan

EPA will either approve the RAWP or require modification of it in accordance with the procedures set forth in Section XI of the Consent Decree.

D. Performance of Remedial Construction

1. Upon the EPA's written approval of the RAWP for a given Remedial Work Element, Settling Defendants shall initiate and perform the remedial construction in accordance with the RAWP and the approved Final Design Report, which includes the approved remedial construction schedule.
2. During performance of the remedial construction, Settling Defendants may identify and request EPA approval for field changes to the approved RAWP, Final Design Report and construction schedule, as necessary, to complete the work. EPA will either approve, disapprove, or require modification of any requests for field changes in accordance with the procedures set forth in Section XI of the Consent Decree.

X. PRE-FINAL AND FINAL INSPECTIONS, REMEDIAL ACTION REPORT, NOTICE OF CONSTRUCTION COMPLETION

- A. At least fourteen (14) days prior to the completion of construction, Settling Defendants and their contractor(s) shall be available to accompany EPA personnel and/or their representatives on a pre-final inspection. The pre-final inspection shall consist of a walkover of the Site to determine the completeness of the construction its consistency with the RD Reports, the Consent Decree, the ROD and applicable federal and state laws, rules, and regulations.
- B. Following the pre-final inspection, EPA will either specify the necessary corrective measures to the construction phase of the Remedial Action, or determine that construction is complete. If EPA requires corrective measures, Settling Defendants shall undertake the corrective measures according to a schedule approved by EPA. Within fourteen (14) days after completion of the construction of the corrective measures, Settling Defendants and their contractor(s) shall be available to accompany EPA personnel or their representatives on an inspection as provided for in the preceding paragraph. Said inspection will be followed by further directions and/or notifications by EPA as provided above in this paragraph.
- C. Within twenty-one (21) days of the date that Settling Defendants concludes that they have met the Performance Standards as specified in the ROD and this SOW, Settling Defendants shall schedule and conduct a final inspection to be attended by Settling Defendants, EPA, NJDEP, and/or their respective representatives. The final inspection will consist of a walk-through of the project to determine the completeness of the RA and its consistency with the ROD, this SOW, and the consent decree. EPA may direct Settling Defendants to correct any deficiencies identified during the

inspection. Settling Defendants shall implement the tasks necessary to correct any deficiencies in accordance with the specifications and schedules established by EPA.

D. Within fourteen (14) days of completion of the tasks, Settling Defendants shall be available to accompany EPA and NJDEP personnel and/or their respective representatives on a follow-up inspection. Within one hundred and twenty (120) days of EPA's determination that construction is complete as set forth in Subsection B., above, Settling Defendants shall submit a Draft Remedial Action Report, as set forth in Subsection E., below.

E. The Draft Remedial Action Report set forth in Subsection D, above, shall include the following sections:

1. Introduction

- a. Include a brief description of the location, size, environmental setting, and operational history of the site.
- b. Describe the operations and waste management practices that contributed to contamination of the site.
- c. Describe the regulatory and enforcement history of the site.
- d. Describe the major findings and results of site investigation activities.
- e. Describe prior removal and remedial activities at the site.

2. Background

- a. Summarize requirements specified in the ROD. Include information on the cleanup goals, institutional controls, monitoring requirements, operation and maintenance requirements, and other parameters applicable to the design, construction, operation, and performance of the RA.
- b. Provide additional information regarding the basis for determining the cleanup goals, including planned future land use.
- c. Summarize the RD, including any significant regulatory or technical considerations or events occurring during the preparation of the RD.
- d. Identify and briefly discuss any ROD amendments, explanation of significant differences, or technical impracticability waivers.

3. Construction Activities

- a. Provide a step-by-step summary description of the activities undertaken to

construct and implement the RA (e.g., mobilization and site preparatory work; operation of the treatment/stabilization technology; associated site work, such as fencing and water collection and control; and sampling activities).

- b. Refer the reader to the Appendices for characteristics, site conditions, and operating parameters for the system.

4. Chronology of Events

- a. Provide a tabular summary that lists the major events for the RA and associated dates of those events, starting with ROD signature.
- b. Include significant milestones and dates, such as, remedial design submittal and approval; ROD amendments; mobilization and construction for the remedy; significant operational events such as treatment system, application start-up, monitoring and sampling events, system modifications, operational down time, variances or noncompliance situations, and final shutdown or cessation of operations; final sampling and confirmation-of-performance results; required inspections; demobilization; and startup of post-construction operation & maintenance activities.

5. Performance Standards and Construction Quality Control

- a. Describe the overall performance of the technology in terms of comparison to Performance Standards.
- b. For treatment remedies, identify the quantity of material treated, the strategy used for collecting and analyzing samples, and the overall results from the sampling and analysis effort.
- c. Provide an explanation of the approved construction quality assurance and construction quality control requirements or cite the appropriate reference for this material. Explain any substantial problems or deviations.
- d. Provide an assessment of the performance data quality, including the overall quality of the analytical data, with a brief discussion of QA/QC procedures followed, use of a QAPP, comparison of analytical data with data quality objectives.

6. Final Inspection and Certifications

- a. Report the results of the various RA contract inspections, and identify noted deficiencies.
- b. Briefly describe adherence to health and safety requirements while implementing the RA. Explain any substantial problems or deviations.

- c. Summarize details of the institutional controls (*e.g.*, the type of institutional control, who will maintain the control, who will enforce the control).
- d. Describe results of pre-certification inspection.
- e. This section shall include a certification statement, signed by a responsible corporate official of one or more of the Settling Defendants or by the Settling Defendants' Project Coordinator, which states the following:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

7. Summary of Project Costs

- a. Provide the actual final costs for the project. If actual costs are not available, provide estimated costs.
- b. Provide the costs previously estimated in the ROD for the selected remedy, including, as applicable, RA capital costs, RA operating costs, and number of years of operation. Adjust the estimates to the same dollar basis year as the actual project costs, and provide the index used.
- c. Compare actual RA costs to the adjusted ROD estimates. If outside range of -30 to +50 percent, explain the reasons for differences.
- d. For treatment remedies, calculate unit costs based on the sum of the actual RA capital and RA operating costs divided by the quantity of material treated.
- e. Refer the reader to the Appendix for a detailed breakdown of costs.

8. Observations and Lessons Learned

Provide site-specific observations and lessons learned from the project, highlighting successes and problems encountered and how they were resolved.

9. Contact Information

Provide contact information (names, addresses, phone numbers, and contract/reference data) for the major design and remediation contractors, as applicable.

10. Appendices: Cost and Performance Summary

- a. The specific parameters for documenting cost and performance information are presented in the *Guide to Documenting and Managing Cost and Performance Information for Remediation Projects*, EPA 542-B-98-007.
 - b. Identify the matrix characteristics and site conditions that most affected the cost and performance, the corresponding values measured for each characteristic or condition, and the procedures used for measuring those characteristics or conditions.
 - c. Identify the operating parameters specified by the remediation contractor that most affected the cost and performance, the corresponding values measured for each parameter, and the procedures used for measuring those parameters.
 - d. Provide a detailed breakout of the actual RA capital costs.
 - e. Provide supplemental information in appendices to the Remedial Action Report. These could include a map of the site and operable unit, supplemental performance information, and a list of references.
- F. EPA will either approve the Draft Remedial Action Report, thus making it the Final Remedial Action Report, require modifications, and/or require corrective measures to fully and properly implement the Remedial Action(s), in accordance with Subsection X.B. or C., above.

XI. PROGRESS REPORTS

- A. Settling Defendants shall submit to EPA one copy of written monthly progress reports during the Remedial Design and Remedial Construction phases of the work. Settling Defendants shall submit these progress reports to EPA by the tenth day of every month until the Remedial Action Report has been approved by EPA. These progress reports shall:
1. Describe the actions which have been taken toward achieving compliance with the Consent Decree during the previous month;
 2. Include a summary of all validated results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month;
 3. Identify all plans and other deliverables required by the Consent Decree completed and submitted during the previous month;
 4. Describe all actions, including, but not limited to, data collection and

implementation of Work, which are scheduled for the next eight weeks and provide other information related to the progress of remedial activities;

5. Include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the schedule, and a description of efforts made to mitigate those delays or anticipated delays;
6. Include any modifications to the RD and RA Work Plans (including respective schedules) that Settling Defendants have proposed to EPA or that have been approved by EPA;
7. Describe all activities undertaken in support of community relations during the previous month and those to be undertaken in the next eight weeks.

- B. As requested by EPA, Settling Defendants shall provide weekly field reports in addition to monthly progress reports at any time during the RD and RA of the selected remedy.